

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS ALBERTO CANCHOLA-
ESPINOZA,

Defendant - Appellant.

No. 04-50588

D.C. No. CR-04-0998-MJL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER and BYBEE, Circuit Judges.

Marcus Alberto Canchola-Espinoza appeals from his jury trial conviction for bringing in illegal aliens for financial gain, aiding and abetting, in violation of 8 U.S.C. § 1324 (a)(2)(B)(ii) and 18 U.S.C. § 2, and bringing in illegal aliens

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

without presentation, in violation of 8 U.S.C. § 1324 (a)(2)(B)(iii). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Canchola-Espinoza contends that the district court erred when it failed to dismiss his indictment because of an allegedly improper grand jury instruction. This court has held that this grand jury instruction is constitutional. *United States v. Navarro-Vargas*, 408 F.3d 1184, 1204 (9th Cir. 2005) (en banc). Accordingly, the district court did not err in denying the motion to dismiss the indictment.

AFFIRMED.